

Bill No. 12-09
Concerning: Ethics - Ex Parte
Communications
Revised: 3-23-09 Draft 3
Introduced: March 31, 2009
Expires: October 1, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Floreen, Ervin, and Leventhal;
Council Vice-President Berliner, and Council President Andrews

AN ACT to:

- (1) further define which communications are allowed when a decision must be made on the basis of a record; and
- (2) generally amend the County law regarding communications to decision-makers.

By amending

Montgomery County Code
Chapter 19A, Ethics
Section 19A-15

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Section 19A-15 is amended as follows:

19A-15. Disclosure of confidential information; ex parte communications.

* * *

(b) (1) A public employee decision-maker must not consider any [ex parte or private] communication made outside of the record regarding any matter that must be decided on the basis of a record, [after giving interested parties an opportunity for a hearing] including any matter that would be subject to a future on-the-record proceeding which is reasonably foreseeable.

(2) Except as otherwise expressly authorized by law, any public employee decision maker, and any public employee who directly advises a decision maker, must not:

(A) initiate or participate in any communication outside the record with any person regarding a matter that must be decided on the basis of a record; or

(B) conduct an independent investigation of any fact in or related to a record of a matter that is before or will come before the decision-maker.

(3) The recipient of any communication made outside the record, including advice rendered by officials or staff of another government agency, must [incorporate any ex parte or private] promptly enter that communication in the record. If the communication was oral, the recipient must write down the substance of the communication and enter it into the record. The decision-making body may consider [ex parte or private communications] any communication made outside of the record

if all parties are given [an appropriate] a reasonable opportunity to respond.

(4) This subsection does not [apply to] restrict a communication that consists solely of:

[(1)] (A) advice rendered to a decision-maker by an attorney [for the County] employed or retained by the decision-maker's agency;

[(2)] (B) advice rendered to a decision-maker by appropriate officials or staff of [County or other government agencies] the decision-maker's agency;

(C) a procedural question that does not involve the substance of facts in a record; and

[(3)] (D) discussions between members of a decision-making body.

Approved:

Philip M. Andrews, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date